

Exhibit 31

IN THE COURT OF COMMON PLEAS IN AND FOR
THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CIVIL DIVISION

- - -

GLEN GADDY, et al	:	NO. 2016-28344
	:	
	:	
vs.	:	
	:	
	:	
MONTGOMERY COUNTY BOARD	:	
ELECTIONS	:	

- - -

PETITION TO RECOUNT AND/OR RECANVASS

- - -

Wednesday, November 30, 2016
Commencing at 1:40 p.m.

- - -

Courtroom C
Montgomery County Courthouse
Norristown, Pennsylvania

- - -

BEFORE: THE HONORABLE BERNARD A. MOORE, SENIOR JUDGE

- - -

COUNSEL APPEARED AS FOLLOWS:

ILANN M. MAAZEL, ESQUIRE
LAWRENCE M. OTTER, ESQUIRE
for the Petitioners

NICOLE FORZATO, ESQUIRE
for the Montgomery County Election Board

LAWRENCE J. TABAS, ESQUIRE
for President-Elect Donald J. Trump,
Vice-President Michael R. Pence, Twenty
Electors, the Republican Party of
Pennsylvania

JONATHAN S. GOLDSTEIN, ESQUIRE
for the Republican Party

- - -

2 THE COURT: At this point, we a
3 have a number of requests in regard to the recount;
4 but I noticed there is a preliminary motion for
5 permission to have an attorney admitted pro hac vice?

6 MR. OTTER: That's correct.

7 THE COURT: Mr. Otter, is that
8 your motion?

9 MR. OTTER: Yes, it is.

10 THE COURT: Very well. Would
11 you briefly state your position and then I will hear
12 from the other attorneys.

13 MR. OTTER: It is in the
14 motion --

15 THE COURT: Sure.

16 MR. OTTER: -- the supporting
17 documents that Mr. Maazel is my cocounsel in this
18 matter. He is from Manhattan, an esteemed member of
19 the bar of New York among other bars, which are listed
20 in his verification. He has paid the proper fees and
21 I would verify that at my motion.

22 THE COURT: All right. If I can
23 inquire, did any of the other attorneys have any
24 objections to the pro hac vice?

25 MS. FORZATO: No objection.

2 MR. TABAS: No, Your Honor.

3 MR. GOLDSTEIN: No, objection.

4 THE COURT: Very well.

5 Accordingly, your motion is granted and counsel will
6 be admitted pro hac vice.

7 MR. OTTER: Thank you, Your
8 Honor.

9 THE COURT: Mr. Otter, I believe
10 you are the moving party in regard to these petitions.
11 Perhaps, you could set your legal analysis and then I
12 will give all the other attorneys an opportunity to be
13 heard.

14 MR. OTTER: I would defer to
15 counsel.

16 THE COURT: Sure. Co-counsel,
17 certainly.

18 MR. MAAZEL: Yes. Good
19 afternoon, Your Honor.

20 THE COURT: Is that Mr. Maazel?

21 MR. MAAZEL: Mr. Maazel.

22 THE COURT: Mr. Maazel. Very
23 well. Why don't we hear your analysis and then we
24 will hear from the other attorneys.

25 MR. MAAZEL: Thank you, Your

2 Honor.

3 So we are here on behalf of Jill
4 Stein, the presidential candidate Green Party, in this
5 year's presidential race in support of these petitions
6 by over two hundred voters in the County of Montgomery
7 who have come forward and, I believe, seventy-eight
8 separate precincts, election districts, requesting
9 recount, recanvass of the vote in their districts.

10 It is just an outpouring of
11 support from people who want to make sure their votes
12 are accurately counted.

13 We are here on what is now a
14 3262 petition. They originally gotten the County
15 Board on 3154. They were told to go to court. They
16 went to court. And I think there's no question that
17 they have satisfied all of the prerequisites under
18 3262.

19 Three qualified electors in
20 every one of the seventy-eight precincts, and some
21 precincts I believe more than three qualified
22 electors, all notarized, all verified, all of them
23 allege an error in the counts in Montgomery County.
24 Actually, they allege in their petition more than what
25 is required under the 3262.

2 And in addition, the
3 prothonotary demanded that each division pay a fee of
4 two hundred and sixty-nine dollars and fifty cents,
5 which adds up to a total fee of twenty-one thousand,
6 twenty-one dollars for all of these petitions, which
7 is well in excess of the fifty dollar requirement set
8 forth in 3262.

9 So for whatever reason -- and
10 Miss Stein actually paid those fees on these
11 petitioners' behalf, so whatever reason, we paid much
12 more than the required fee.

13 Under the circumstances, there's
14 no discretion here for the Board of Elections not to
15 recanvass the vote. All the statutory environments
16 have been made; and if they are met, they must
17 recanvass.

18 The issue that is before the
19 Court today --

20 THE COURT: Counsel, let me just
21 ask you preliminarily --

22 MR. MAAZEL: Yes.

23 THE COURT: -- under 25 Purdon's
24 Statute 3263 --

25 MR. MAAZEL: Yes.

2 THE COURT: -- they talk about
3 any recount or recanvass shall include all election
4 districts in which the ballots were cast in the office
5 in question. Wouldn't that mean the entire State of
6 Pennsylvania? Can you have an isolated recount in a
7 handful of precincts, you know, with candidates for
8 the president statewide and the candidates to the U.S.
9 Senate statewide?

10 MR. MAAZEL: Yes. Yes, I
11 believe we can, Your Honor.

12 I don't think it is conceivable
13 that the State of Pennsylvania would require -- there
14 are over nine thousand election districts in the State
15 of Pennsylvania. It is absolutely inconceivable that
16 anyone could have imagined that it would be necessary
17 for over twenty-seven thousand people throughout the
18 State of Pennsylvania to file in over nine thousand
19 districts just to have a recount in any district.

20 It would be an extraordinary --
21 there's no -- there would be -- it would be an
22 imposition.

23 THE COURT: Isn't that the law?

24 MR. MAAZEL: No. I don't
25 believe it is, Your Honor.

2 I think what this -- I think
3 what this section means is that any petition must be
4 filed in accordance with the requirements of the acts,
5 a fifty dollar fee, the three voters per precinct,
6 notarization, et cetera.

7 That they have done. And so
8 whichever districts they have sought a recount or
9 recanvass those are the districts where there should
10 be a recount or recanvass.

11 THE COURT: What about the
12 language of the statute where it says recounts shall
13 include all districts in which ballots were cast for
14 the office in question? I mean doesn't the law --
15 doesn't the Court have to follow that law?

16 MR. MAAZEL: We certainly
17 wouldn't object, if the Court ordered a statewide
18 recount. I mean, there's no objection from our side.

19 THE COURT: Well, individual
20 county court doesn't have the authority to order a
21 statewide recount, do they?

22 MR. MAAZEL: Well, if -- even if
23 we read Section A of countywide, then we certainly
24 wouldn't object to a Montgomery wide recount, if
25 that's what the law requires.

2 But it is certainly -- I do not
3 believe and I don't think it possibly could mean that
4 there's a requirement with the State of Pennsylvania.
5 And I have never seen any court that says it requires
6 over twenty-seven thousand people in nine thousand
7 districts to request a recount for there to be a
8 recount in a single district. That would deny all of
9 these hundreds of voters their ability to seek
10 recounts and make sure their votes are counted
11 accurately.

12 It would deny the rights of
13 voters in counties throughout the state that have
14 requested recounts and recanvassing of the vote. So
15 can it be there's only one precinct in one county
16 anywhere in Pennsylvania that doesn't have three
17 electors, that every single other voter throughout the
18 entire State of Pennsylvania is not allowed to request
19 a recount?

20 I mean to me that's an
21 impossible reading of the law. I don't think there's
22 any intention in this law for that reading.
23 Certainly, I have not seen any court case that
24 supports that to you, which would make it absolutely
25 impossible for there ever to be a recount, a recanvass

2 anywhere in Pennsylvania from a statewide race.

3 THE COURT: Well, certainly, we
4 will hear further argument on all of these issues.

5 MR. MAAZEL: Sure.

6 THE COURT: Let me ask you this:
7 What do you perceive the scope of the recount you are
8 requesting?

9 MR. MAAZEL: Sure. So we
10 have -- I don't know if Your Honor had a chance to see
11 our brief yet which we only filed recently, but there
12 are a couple of things that we know in this election
13 which I think are very important to inform Your
14 Honor's consideration.

15 The first is that this was an
16 election and an election process that has been subject
17 for an interference. We know that the Department of
18 Intelligence, the Department of Homeland Security has
19 said -- and I quoting from an exhibit to the Halderman
20 Affidavit in support of the petition.

21 They have said there, quote,
22 competent that a foreign government has hacked emails
23 in the United States, quote, to interfere with the
24 U.S. election process.

25 We also know -- and this is in

2 our papers or the petitions' papers -- we know that
3 hackers infiltrated voter registration systems in
4 Arizona, Illinois, and they stole voter data in those
5 states.

6 We also have evidence that
7 hackers have attempted to breach election offices in
8 at least twenty states in this country. This is all
9 as part of the 2068 Presidential Election.

10 So we know there's an enormous
11 effort to interfere with the most important process in
12 our country, which is the right to vote. That's the
13 first thing.

14 The second thing we know is that
15 these machines, the DRE machines, used in Pennsylvania
16 and in particular the DRE machines used in Montgomery
17 County are extremely vulnerable to malware and to
18 hacking and to interference. They are easy to
19 compromise.

20 It is easier to hack into a DRE
21 machine in Montgomery County than to hack into an
22 I-phone. And this is supported by the Affidavits we
23 have submitted to the Court, the Affidavit of
24 Mr. Halderman, who is one of the leading computer
25 scientists in the country; the Affidavit of

2 Mr. Lopresti, who was the one of the founders of the
3 research at Information Technology Laboratory in
4 Princeton; and also the Affidavit of Harri Hursti, who
5 did a peer review leading study on the vulnerability
6 of the very machine used in this county.

7 As Your Honor knows, there are
8 no paper ballots in Montgomery County. There's no way
9 to look at a paper ballot.

10 THE COURT: But isn't the
11 statutory recount under the Election Code limited to
12 recomputing the numbers? It doesn't really go beyond
13 that, does it?

14 MR. MAAZEL: I think the Supreme
15 Court of Pennsylvanian and the McCracken case tells us
16 we can go beyond that; and not only we can, but we
17 must.

18 And the McCracken case, which we
19 have cited in our papers, has held squarely that in
20 the computation in the vote, the Board's functions --
21 and I am quoting here from the Supreme Court -- are
22 not limited to those of the human eyes adding machine.
23 The Board is not a multiple Comptometer.

24 And the Court went on to say
25 that the Election Code is a fraud remedial statute

2 designed to vindicate the right of voters to able to
3 make sure the votes were counted accurately.

4 In fact, the Supreme Court said
5 there could be any duty more apparent and impellent of
6 the election board than that of ascertaining for whom
7 votes were cast.

8 And then the Supreme Court said
9 that the Board of Elections has discretion. It has
10 discretion to not strictly construe the Election Code
11 only to just count numbers. They have the discretion
12 to make sure that votes were counted the way they were
13 actually cast.

14 There's absolutely no way to do
15 that in Montgomery County unless we do a forensic
16 audit of those machines and of the central election --

17 THE COURT: Well, are there any
18 cases in Pennsylvania which authorized forensic
19 analysis of the voting equipment?

20 MR. MAAZEL: There is no case
21 where it has been asked. There's no case where it has
22 been denied. There is no case where it has been
23 litigated to my knowledge.

24 I have not seen a case squarely
25 on point. I think this Court would be the first to

2 address this issue.

3 I would suggest to the Court
4 that, you know, this Election Code largely from, I
5 believe, the 1930's this was written before the
6 internet. It was written before people even knew
7 about the possibility of interfering with the vote or
8 such a thing as hacking.

9 I mean, it is -- what we know is
10 that these machines, they all have cartridges that
11 certainly -- they all come from the same place. And
12 the place they come from, the central management
13 system of the County of Montgomery, is on the
14 internet. And these experts have laid out very stark
15 terms just how easy it is, how unbelievably it is to
16 interfere with those machines.

17 You press the button. You think
18 you are voting for Donald Trump. You are actually
19 voting for Hillary Clinton and you don't even know it.

20 Or the machine just changed some
21 subset set of the votes, maybe three percent, maybe
22 five percent in the favor of one candidate or the
23 other. It is not difficult to do. These experts have
24 done it to these machines. It wasn't hard for them.
25 It wasn't even remotely hard.

2 And in the context of an
3 election, where the Department of Homeland Security is
4 telling us we have a foreign actor trying to interfere
5 in our election process and where we have actual
6 evidence that there has been interference in the
7 election process, given what the Supreme Court said in
8 McCracken where the Board has discretion, where we
9 have to vindicate the right to vote, I can see no
10 reason why we would not allow, indeed, almost require
11 an analysis by computer experts of the software, of
12 the removable media. It is not a hard thing to do.

13 I will represent to the Court
14 that the Stein campaign is in touch with a number of
15 these experts. We could have -- will pay for these
16 experts to do this work. We will do it under the
17 supervision of the Board and can start as soon as
18 tomorrow.

19 We are ready, willing and able
20 to do this work on behalf of the voters in Montgomery
21 County and the State of Pennsylvania to make sure that
22 the votes were accurately counted. There's absolutely
23 nothing more important in our democracy than making
24 sure the votes were counted and with the extraordinary
25 evidence that these machines, that never should have

2 been used in the first place, that they are so easy to
3 hack and so vulnerable, and when we know about this
4 foreign interference, I think it is really the only
5 responsible measure to ensure, not just for voters of
6 Montgomery, but to have voters of Montgomery and
7 Pennsylvania and the country know that their vote
8 mattered, and that whoever they voted for on Election
9 Day was the person to receive that vote.

10 And so following the case law of
11 the Supreme Court and the broad remedial purpose of
12 the election law, I do believe that the Board of
13 Elections and Your Honor has a discretion, the power,
14 and perhaps even the obligation to make sure that
15 these votes were counted correctly, so we don't just
16 trust these vulnerable, inadequate machines.

17 And that is why we are here
18 today. That's why over two hundred voters in the
19 County of Montgomery came forward to request this.
20 That's why the Stein Campaign paid over twenty-one
21 thousand just for this right. It is the most precious
22 right and we respectfully request that the Court
23 authorize our -- these voters this request for this
24 relief.

25 THE COURT: Very well. Ms.

2 Forzato, on behalf of the Election Board, do you have
3 any comment on any of these issues?

4 MS. FORZATO: I do, Your Honor.
5 Actually, on several of them.

6 If I may, I'm going to hand up,
7 which I handed to counsel earlier, the Election Board
8 preliminary objections.

9 THE COURT: Give our court
10 reporter a moment.

11 Sure. You may proceed.

12 MS. FORZATO: If I could start
13 back up a little bit. Preliminary, I believe that all
14 seventy-eight of these petitions should be
15 consolidated into one action. So that way we can
16 proceed under one docket number and move forward. I
17 think that would be the cleanest in light of the fact
18 that we are currently proceeding under --

19 THE COURT: Maybe I could deal
20 with that issue preliminarily. Would all counsel be
21 agreeable to that?

22 MS. FORZATO: Yes.

23 MR. TABAS: Yes.

24 MR. MAAZEL: Yes.

25 MR. GOLDSTEIN: Yes.

2 MR. OTTER: Yes, Your Honor.

3 THE COURT: Very well. And I
4 noticed there was a number on the pro hac vice motion.
5 Is that the term and number we want to go with?
6 Combine them?

7 MS. FORZATO: That would be
8 great.

9 THE COURT: Is that agreeable to
10 everyone?

11 MR. MAAZEL: Yes.

12 MR. TABAS: Yes, Your Honor.

13 THE COURT: Very well.
14 Accordingly, at this point, we will consolidate all of
15 these petitions under the term and number listed on
16 the pro hac vice petition, so that these matters are
17 now consolidated.

18 MS. FORZATO: Thank you, Your
19 Honor.

20 The second thing I would like to
21 do is I did not hear counsel ask to amend those
22 seventy-eight petitions. The Affidavits of Daniel
23 Lopresti, Poorvi L Vor, P-O-O-R-V-I, L, V-O-R, the
24 affidavits of Daniel Wallach, W-A-L-L-A-C-H, were not
25 attached to any of those seventy-eight petitions,

2 since they have not moved to amend them nor would it
3 be timely to amend them, I would ask they not be
4 considered in these proceedings today.

5 That would leave us with the
6 original Affidavits of J. Alex Halderman. And I
7 believe that is not sufficient to get us over the
8 hurdle but I will get back to that in a moment.

9 To start under 3154E, that
10 would -- they would have had to have filed that action
11 with the Board of Elections while the official
12 computation was actually occurring. They did not do
13 that. They then wrote on every single one of the
14 petitions on the coversheet that they are filing under
15 3262. That is the only two statutes that are
16 referenced anywhere in any of those seventy-eight
17 petitions are 3154 and 3262.

18 Why that is going to become
19 tremendously important is because under 3262 in
20 addition to filing fees, what the prothonotary does as
21 an independently elected official, in terms of costs
22 and fees are one thing, but they also had an
23 obligation under 3262A.1 to file either fifty dollars
24 in cash or one hundred dollar bond signed by those
25 three petitioners and with the corporate surety for

2 every single one of those cases. That would have been
3 additional thirty-nine hundred dollars if it was the
4 fifty dollars cash or seventy-eight hundred dollars if
5 they filed the bonds.

6 Those actions were not taken.
7 As a results of that, it is our opinion that the Court
8 doesn't have the ability to proceed further because
9 they have failed to conform to the requirements of the
10 law.

11 Taking it another step forward,
12 if they are filing under 3262, the only thing they are
13 asking for is the recanvass of our machines. They
14 aren't asking for a recount of the entire election.
15 That makes no sense.

16 Here is what is important to
17 know. If this gets to the point where we have
18 evidence, I will bring in our expert from Dominion,
19 who is our company that provides our software for our
20 voting machines.

21 Those machines cannot be hacked.
22 The Affidavit that these petitioners are relying on is
23 very speculative. He speaks to his rationale being
24 that the DNC emails were hacked, that John Podesta's
25 emails were hacked, that Donald Trump has a

2 relationship with Mr. Putin, and then goes on to say
3 because the results were different than what the poles
4 suggested they should be, it ought to be believed that
5 they were hacked.

6 And he continues to say that
7 they would have been hacked by either our staff or
8 other individuals who put some special spyware or
9 malware on those machines which magically erased
10 itself by the end of election night; and as a result
11 of that speculative at best statement, they are asking
12 for a recount.

13 You can ask for a recount if you
14 believe there's an error, but mere speculation based
15 on additional speculation is not enough. I ask you to
16 factor that in here because in Mr. Halderman's
17 Affidavit, he blanketly says Pennsylvania, he does not
18 speak to our Sequoia voting machine, he does not speak
19 -- he speaks generally and that this possibly
20 happened. And you know what, his resume also says
21 that he has a patent for electronic auditing of voting
22 machines. Something to consider.

23 We are not allowed to do
24 anywhere in this state, and Your Honor knows this, is
25 to force a fishing expedition to try to get somewhere.

2 It is just not the way the law works.

3 THE COURT: Ms. Forzato, I will
4 just ask you, in your opinion, are these timely
5 petitions -- what about this five-day requirement
6 under the statute?

7 MS. FORZATO: Under the statute,
8 I believe Mr. Goldstein is going to address that. It
9 would have been five days -- would have been Sunday so
10 we are supposed to certify after the fifth day which
11 would have been Monday. So I am not raising an issue
12 as to timing.

13 THE COURT: All right.

14 MS. FORZATO: But I am certainly
15 raising an issue as to 3262A1 not being complied with
16 and, therefore, this should be thrown out on its face,
17 if that's what they are proceeding under.

18 Alternatively, if they are
19 proceeding under 3154, then this Court is without
20 jurisdiction because it was supposed to go in front of
21 the Board and they didn't take that step in a timely
22 fashion.

23 Finally, I would like to make a
24 point that Your Honor brought up. Under 3263, without
25 question, you are a hundred percent correct, there's

2 an obligation in the federal election, especially, if
3 you are going to cause a recount, it has to be a
4 recount of all of those districts.

5 And this gentleman, Mr. Tabas,
6 is going to speak to that in much more detail. So I
7 will save that for him; but you are a hundred percent
8 correct. If they wanted a recount, they could not
9 cherry-pick those municipalities because that's where
10 they got volunteers to petition from.

11 They have an obligation to put
12 it before this Board in full form so that it would be
13 a fair recount and it would be an accurate recount.
14 But, again, they are not even actually asking for a
15 recount under the statutes that they are trying to
16 proceed under. They are just for a recanvass.

17 And you know this, they
18 typically go and you file under 3261 and 3262 so that
19 you would have a check of all of the votes. They have
20 not asked for that. So what they are asking for is
21 not even making sense.

22 As to your point of a forensic
23 analysis of our voting machines, that is in complete
24 contradiction of the election code. Those voting
25 machines are not to be touched. They are not to be

2 searched or manipulated in any way. But if this gets
3 to the point where we present evidence, I will bring
4 in our expert, and he will tell you those voting
5 machines would shut down if someone tried to put some
6 type of spyware or malware on them because they don't
7 have the capacity to read that.

8 THE COURT: Very well. Thank
9 you, Ms. Forzato.

10 At this point, would Mr. Tabas
11 or Mr. Goldstein like to be heard, or I will give you
12 both an opportunity to comment.

13 MR. TABAS: Thank you, Your
14 Honor. I am Lawrence Tabas. I'm chief counsel in
15 Pennsylvania for the 20 electors for President-Elect
16 Donald Trump, Vice President Elect Mike Pence, also on
17 behalf as general counsel of the Republic Party of
18 Pennsylvania, on behalf of all Republican candidates
19 on the ballot have standing under the decisions of the
20 Supreme Court of Pennsylvania. Mr. Goldstein's firm
21 is serving as cocounsel for me as these matters are
22 throughout the state at this particular time.

23 Your Honor, I agree with the
24 county solicitor's procedural arguments and the points
25 that she has made. Just one other point on the

2 requirement of the fifty dollar cash deposit or the
3 one hundred dollar bond is completely a separate
4 requirement from that of a prothonotary's finding fee,
5 because under the statute, under section 3262, if it
6 is determined that there was no fraud or error in
7 recanvass, the fifty dollars goes to the treasurer of
8 the county. If it turns out there was, the fifty
9 dollar goes back to the petitioner. That is a
10 separate item altogether from a prothonotary's filing
11 fee. So there's absolutely on the face of this a
12 fatal defect to the petition.

13 And in that regard, Your Honor,
14 I first refer to the Commonwealth Court's decision,
15 which is still very good law here in Pennsylvania of
16 Rinaldi versus Ferrett. It was the opinion by then
17 President Leadbetter in which she summarized and
18 referenced the jurisdictional basis for any proceeding
19 to contest the outcome of the election, whether it
20 would be a recount, recanvass, or an election contest.

21 Your Honor, with the Court's
22 permission, Judge Leadbetter stated that jurisdiction
23 to resolve election disputes is not of common law
24 origin but is founded entirely upon statute and cannot
25 be extended beyond the limits defined by the general

2 assembly.

3 She went on to say, the
4 statutory provisions set forth at length above
5 constitute the exclusive means for challenging the
6 accuracy of the election result.

7 So in the case of Rinaldi versus
8 Ferrett, there was a defect in the number of the
9 petitioners and the filing company. That was a fatal
10 defect just as is the failure to post either the cash
11 deposit or the one hundred dollar bond would also be
12 an absolute fatal defect which would divest this Court
13 of jurisdiction to proceed any further because there
14 is no common law despite Mr. Maazel's reference to the
15 McCracken case. There's no common law that applies to
16 the jurisdiction of this Court.

17 Your Honor, then I would like to
18 address briefly, also, the issue that the county
19 solicitor raised as well and it goes to your question
20 about the cherry-picking. The 3263, which was amended
21 actually 2004, and the internet, Your Honor, did exist
22 in 2004, when 3263 was amended to put in the provision
23 requiring that you have to recount or recanvass in all
24 of the districts for the candidate or for the
25 candidate's office, and that if you were going to

2 select a few, you had to meet the standards of that
3 section.

4 But even Your Honor if they had
5 pled sufficient grounds to not recount all of the
6 districts, either in Montgomery County, or the state
7 as a whole, and I would argue for the President of the
8 United States and the United States citizens is
9 absolutely the district is the state of the whole.

10 The United States Supreme Court
11 in Bush versus Gore recognized that the federal
12 statute on point Entitled Three of the United States
13 Code Section 5 requires that in these type of
14 situations there must be equal protection applied so
15 that every single vote that is passed is treated the
16 same.

17 In Florida, as Your Honor I'm
18 sure recalls, they cherry-picked. They picked a few
19 counties and now even within the counties, they picked
20 various different types of ballots to count, some that
21 were paper, some that weren't, some that used chads,
22 some that used other methods.

23 The Supreme Court made it clear
24 in Bush versus Gore applying historical Supreme Court
25 decision and referencing the Title Three of the United

2 States Code Section Five that the right to vote is
3 protected in more than the initial allocation of the
4 franchise. Equal protection applies as well to the
5 manner of its exercise. Having once granted the right
6 to vote on equal terms, the State may not later
7 arbitrarily allow district treatment to value one
8 person's vote over that of another.

9 That would be exactly what would
10 be happening here if they just picked to look at
11 certain of the votes, not even in the state as a
12 whole, which I do believe they have to all ninety-one
13 hundred plus districts; but within even the county, it
14 is going to be district treatment and unequal
15 protection of the law.

16 Furthermore, Bush versus Gore
17 made it clear, and it is the President of the United
18 States, that in a Presidential Election, there is a
19 federal safe harbor that would absolutely supersede
20 any right to cherry-pick under Pennsylvania Statute.
21 Whether that cherry-picking would be allowed in a case
22 for the Audit General or somebody running for the
23 State Senate is a different issue all together.

24 But for the President of the
25 United States, which Bush versus Gore recognized, is

2 the only office, that and vice president, for which
3 the electors of the United States as a whole cast a
4 ballot.

5 The requirement of the United
6 States code and the constitution demands that safe
7 harbor apply. So for the first step there's a
8 jurisdictional fatal defect for this Court under
9 Pennsylvania Election Code. The recanvass petition
10 should be dismissed and also I incorporate, as I said,
11 the county solicitor's references, too, it should
12 absolutely be dismissed because it violates the
13 federal, state -- federal safe harbor applicable to
14 Presidential Elections; and as a result, the
15 petitioner should not be able to proceed.

16 And then dealing with this other
17 issue that was raised by Mr. Maazel. Your Honor, he
18 is raising arguments relating to the machines and
19 whether or not some unnamed foreign government may
20 have hacked the DNC, which last I looked, I don't
21 think Montgomery County stores its voting machines at
22 the DNC.

23 But that's an election contest
24 issue. That is not the same as a recanvass under
25 section 3262. So he is arguing even the wrong section

2 of the Election Code when he makes those particular
3 references.

4 Furthermore, Your Honor, the
5 Montgomery County machines, just like all of the
6 voting machines in Pennsylvania, as reinforced by the
7 Secretary of the Commonwealth on October 20th of this
8 year when he issued a public statement are not
9 connected to the internet. They are not even
10 connected to each other.

11 So all of these allegations
12 about hacking and malware and so forth, which are
13 completely unsubstantiated, don't even reference
14 Pennsylvania let alone Montgomery County, but even the
15 Secretary of the Commonwealth has said, that these are
16 absolutely not only wrong allegations, they are
17 uninformed and they are actually dangerous.

18 So I probably should go no
19 further on that because that's an election contest
20 issue, but I just want to address that particular
21 point as well. Thank you.

22 THE COURT: Very well. Thank
23 you, Mr. Tabas.

24 Mr. Goldstein, do you wish to
25 make any comment?

2 MR. GOLDSTEIN: Yes, Your Honor,
3 quite briefly.

4 I'm grateful for the opportunity
5 to be here with you today.

6 Mr. Tabas made reference to a
7 case earlier and we happen to have a copy of it here,
8 if I may introduce it to the Court.

9 THE COURT: Sure.

10 MR. GOLDSTEIN: I have given a
11 copy to opposing counsel.

12 THE COURT: Do you have a copy
13 for the Clerk?

14 MR. GOLDSTEIN: Yes. The motion
15 contains a couple of bases which don't apply any
16 longer because I want to make sure we are very clear
17 our learned colleague from New York made it abundantly
18 clear when he rose that they are here on the basis of
19 3262. It was not clear from the face of the petition
20 whether they were here on that basis or another basis.
21 So for the parts of our motion to dismiss addressing
22 the other 3662 may no longer be applicable.

23 So on that basis, I rest on the
24 comments made my by learned colleague Mr. Tabas, and I
25 offer that motion for the Court's consideration.

2 THE COURT: Very well.

3 Mr. Maazel, would you like to respond to counsels'
4 argument?

5 MR. MAAZEL: Thank you, Your
6 Honor.

7 THE COURT: Sure.

8 MR. MAAZEL: And many points
9 were made, and I will try to address them quickly and
10 in turn.

11 First, some of the technical
12 arguments.

13 First, I should just have a
14 general response, which is somewhat really depressing
15 that the Republican Party and County Board of
16 Elections have placed any possible robot they can to
17 prevent voters from seeking a recount. That's what we
18 are hearing; every single, possible, technical
19 argument they can to stop voters from learning their
20 votes were counted accurately. I just think that it
21 is disturbing.

22 In terms of those arguments in
23 turn, this fifty dollar requirement is beyond dispute,
24 that these voters paid more than fifty dollars. They
25 have paid the fee demanded by the prothonotary, which

2 was well in excess of the fifty dollar requirement.

3 Now, if there are additional
4 court filing fees that we need to pay in order to meet
5 the fifty dollar requirement and whatever fees being
6 imposed, the Stein Campaign, if it is thirty-nine
7 hundred dollars, we will be happy to pay that on
8 behalf of these petitioner's as well.

9 But the idea that voters must
10 not only pay fifty dollars, as set forth in the
11 statute, but must pay almost twice that, which is what
12 is happening in this case, it is really incredible and
13 there's no statutory support for it.

14 I don't think I had ever seen a
15 case where a petitioner has paid too much and the
16 other side said you have not met the dollar
17 requirement. So that's the fifty dollar issue.

18 The County Board of Elections
19 said the Court should disregard all of the Affidavits
20 not in the original petition, that we need to move to
21 amend. I don't see anything in the statute that
22 requires all of the supporting materials in a case to
23 be filed on the deadline anymore than when you file a
24 regular civil complaint you need to file a hundred
25 Affidavits in support on that day.

2 The filing was made on time.
3 Supporting materials can be added at any time; and if
4 we need to move to amend all of these other
5 Affidavits, then we --

6 THE COURT: What about the issue
7 that a forensic review would not be encompassed in the
8 election code under the recount provisions? That's
9 one of the arguments opposing counsel is advancing.

10 MR. MAAZEL: Sure. Based on the
11 Rinaldi case, which is a Commonwealth Court case, we
12 cited the McCracken case, which is a Supreme Court
13 case, and we think it is the Supreme Court Case and
14 other Supreme Court cases that we cited in our papers
15 that control.

16 Those cases that say you are not
17 restricted to the strict letter of the election code
18 and the Board of Elections is not just a human adding
19 machine. They want just to have these machines, press
20 a button, and have the machine come out the way -- the
21 way that the person voted.

22 They are advocating the very
23 human adding machine approach that the Supreme Court
24 of Pennsylvania said is not the purpose of the Board
25 of Election. That this Board of Election has

2 discretion and Court certainly has discretion and
3 power to go beyond the strict letter of the statute.
4 That is absolutely necessary here under the
5 circumstances of this case.

6 THE COURT: What about the
7 section 3263, which requires that the recount be
8 called to the election precincts, where the election
9 was held, and here we are talking about a statewide
10 raise for president and statewide race of the United
11 States Senate?

12 MR. MAAZEL: I find it really
13 quite incredible that the Republican Party is coming
14 here and saying we have to have over twenty-seven
15 thousand voters in this amazing short period of time
16 come forward in nine thousand districts just to have a
17 right to a recount.

18 In most states, a candidate asks
19 for a recount and it happens. That's what is
20 happening in Wisconsin and Michigan. It cannot be
21 that there's this absolutely impossible requirement
22 that three voters in every single district in every
23 single county need to demand a recount in order for
24 there to be recount anywhere.

25 So I have seen no case, no case

2 that supports that proposition. I cannot believe that
3 such a case would be either an accurate reading of the
4 statute or would be constitutional under the
5 Pennsylvania --

6 THE COURT: The language is in
7 in statute.

8 MR. MAAZEL: The way I harmonize
9 the language with what the national intent of the
10 statute must be is that this Court can do a recount of
11 the entire county. We would support that. We have no
12 objection to -- I don't know if the other job would
13 object. I think they probably would. We would like
14 to have a recount of this county. We would like to
15 have a recount of every county.

16 And so if that's what the
17 statute means, then let's have a recount of the entire
18 county. But I see nothing in the statute that says
19 that we need three people in every single district in
20 the county in order to have that county-wide recount.

21 I think all this means is that
22 if you come forward in the district you need to
23 fulfill the statutory requirements, the fee, the
24 notarization, et cetera.

25 Then we have an argument from

2 the other side that Bush v Gore argument, that we are
3 sometimes cherry-picking within the county and within
4 the state. It is an amazing argument because, first,
5 their interpretation makes it impossible to seek a
6 statewide recount, and then they blame us for not
7 having a statewide recount.

8 You know, if Bush v Gore means
9 what they say it means, then this state has violated
10 the protection clause in many ways. Some counties use
11 obstacle scan, or use DRE's. Is that a Bush v Gore
12 violation? They are being treated differently.

13 Some counties use some type of
14 the DRE machines and others use other types of DRE
15 machines. Are they being treated differently? Is
16 that a violation of Bush v Gore? Is that really their
17 argument that every voter in the country needs to be
18 treated exactly the same way because the entire
19 election system would fall down in a minute?

20 So there's certainly no equal
21 protection violation in allowing voters their right to
22 seek a recount. And if we take their equal protection
23 argument seriously, then the Republican Party should
24 stipulate to a statewide recount.

25 Let's treat every single voter

2 in this state exactly the same and have a recount for
3 everybody. We would agree to that. We would advocate
4 for that. I would like to hear the Republican Party's
5 position on that. I doubt they would agree to that.
6 But we are certainly willing to satisfy their Bush v
7 Gore argument to advocate for that position.

8 I do want to address this
9 question of timeliness. I don't think there is any
10 questioned under 3662F, voters have twenty days from
11 the election. That was yesterday. Under the In Re
12 Canopy Case of the Supreme Court, they actually have
13 the later of twenty days from the election or five
14 days canvassing. In any event, I think it is plain
15 that they have filed timely petitions.

16 And on this question of -- the
17 Board of Elections said these machines cannot be
18 hacked. Well, we don't just have the Affidavit of
19 Mr. Halderman. We have the Affidavit of Mr. Hursti,
20 who did the leading peer review study of the
21 vulnerability of the very machine used in this county,
22 the Sequoia AVC voting machine. Mr. Hursti did that
23 peer review study and here is what Mr. Hursti said,
24 and I think respectfully we should trust what he says
25 more than what counsel says.

2 At paragraph ten of his
3 Affidavit, quote, the AVC Advantage is easily hacked
4 by tampering with the machine's firmware.

5 And then paragraph eleven,
6 without even touching a single AVC Advantage, an
7 attacker can install fraudulent firmware in machines
8 by viral propagation through audio valid cartridges.

9 Now, we heard Mr. Tabas make
10 what I think is a comment that is just incorrect which
11 is the machines are not connected to the internet.
12 Well, the cartridges in the machines telling them what
13 to do all came from the same place, the Central
14 Election Management System of the county, and that is
15 connected to the internet.

16 So it is the simplest thing to
17 have a virus or malware that gets into -- via the
18 internet into these Election Management Systems
19 headquarters, which is the nerve center of this
20 operation and then send it out through the cartridges
21 into the machines. That's just one way it can be
22 done. There are many ways it can be done.

23 So the machines are
24 unfortunately hackable. I don't believe they ever
25 should have been used in the first place.

2 Unfortunately, we have no paper ballot. The one and
3 only way to really make sure the votes were accurately
4 counted is this audit and it can be done at least
5 initially without looking at machines by accessing the
6 central election board software -- the Election
7 Management System without even touching the
8 machine.

9 There could be a tremendous
10 amount of work done by computer scientist by just
11 looking at the software, the central system, and
12 detecting was there interference, was there malware of
13 some kind.

14 That's something that can be
15 done without the slightest worry about interfering
16 with the machine. That would tell us a lot of
17 information that I think is very important to the
18 voters.

19 So for all these reasons, Your
20 Honor, I think the Supreme Court of Pennsylvania
21 authorized this relief. The circumstances of this
22 case upheld this relief and we really need to
23 vindicate the right of the voters. For those reasons,
24 we request this petition be granted.

25 THE COURT: Very well. Ms.

2 Forzato, any further comment?

3 MS. FORZATO: Yes, Your Honor.

4 Very briefly.

5 The petitioner cites the appeal
6 from McCracken from 370 PA 562. It is a 1952 case.
7 It is Supreme Court case, but also our Supreme Court
8 case is the Jones Election Contest, which is
9 docketed -- which is cited at 376 PA 456. That's a
10 1954 case. And then appeal of Flood appeal, 372 PA
11 486, that's a 1953 case, so those are both after the
12 appeals of McCracken.

13 And the reason they are
14 important is they both stand for the proposition that
15 neither this Common Pleas Court nor Election Board has
16 the power to reason to an Election Code that which is
17 not specifically founded in that code. So that
18 defeats the whole argument made by him on that point.

19 Additionally, and probably most
20 importantly, the Election Board had an open official
21 tabulation with every citizen of Montgomery County,
22 was invited to attend. We published that in the
23 newspaper. We want our process to be open. We want
24 our citizens involved. But we also want it to be fair
25 and for a legitimate purpose; not for a fishing

2 expedition. Thank you, Your Honor.

3 THE COURT: Very well. Mr.
4 Tabas, any further comment?

5 MR. TABAS: Yes, briefly Your
6 Honor.

7 First, get back to the Rinaldi
8 decision. While it is a Commonwealth Court decision,
9 it actually cited two Supreme Court decisions of the
10 State of Pennsylvania as the authority for it in two
11 other decisions of the Commonwealth Court, which have
12 been long-standing law in this state, that the
13 jurisdiction of election challenges are absolutely
14 solely within the jurisdiction of the Court only if
15 the statutory requirements are being met.

16 To even suggest that they would
17 supply the cash deposit or the bond after the
18 statutory deadline is an absolute again failure to
19 meet the statutory requirement divesting this Court of
20 jurisdiction.

21 The other point that I would
22 like to make is, and I hesitate a little bit to go
23 into it, but since we are here and it was addressed by
24 Mr. Maazel a second time is, this is not an election
25 contest under 3456. This is a recanvass petition

2 under 3262.

3 In fact, interestingly enough,
4 it is not even a request for a recount under 3261. So
5 they cherry-picked -- cherry-picking actually in this
6 particular situation.

7 But I will make available to the
8 Court it is a public record and I would ask the Court
9 to accept it as a public record of the Secretary of
10 the Commonwealth in which he said -- it was his quote;
11 not mine -- that voting machines in Pennsylvania are
12 not connected to the internet. In fact, they are not
13 even connected to one another.

14 And if Mr. Maazel and the
15 petitioners had reviewed the thorough research
16 analysis and the security work that was done by the
17 secretary of the Commonwealth in working with the
18 Department of Homeland Security of the United States,
19 their searches about our machines, would have no basis
20 whatsoever I believe even in their own minds.

21 And then, finally, Your Honor,
22 the county solicitor correctly made reference to the
23 official tabulation, the computation and canvassing of
24 all of the ballots as provided for in the Election
25 Code.

2 And the Election Code gives
3 every single candidate, every political party, whether
4 it is a state one, a county one, a local political
5 matter, the right to have a watcher at those
6 tabulations and an attorney also present by statutory
7 right.

8 So there were numerous
9 opportunities, if the petitioners had reviewed the law
10 and seen what their rights and opportunities were to
11 have gone through this particular process.

12 The fact that Mr. Maazel
13 believes that Pennsylvania should have a statewide
14 recount because they have it in Michigan or Iowa or
15 Colorado or somewhere else completely ignores the
16 issue and is totally irrelevant. This is the
17 Pennsylvania statute. It has set forth procedures.

18 This Court -- and I say this
19 with all due respect -- I do not believe has
20 jurisdiction over this matter any further for the
21 failure to comply with the statutory requirements as
22 upheld by the Courts of Pennsylvania. Thank you, Your
23 Honor.

24 THE COURT: Very well.
25 Mr. Goldstein, anything further?

2 MR. GOLDSTEIN: Yes, Your Honor.
3 Briefly.

4 Mr. Maazel was admitted pro hac
5 vice two hours ago. He came to know the law in
6 Pennsylvania. Under the law in Pennsylvania, he had a
7 burden. He had a burden to pay a fee to file a
8 petition of this nature. He failed to file the
9 petition with the proper fees and he tried to make
10 much of a lot of other arguments and lay that at the
11 feet of the Republican Party who has done this, that
12 and the other.

13 But really it is a failure of
14 the petitioners to meet the very simple burden laid
15 out clearly in the statute to file the appropriate
16 documents with the appropriate fees on a timely basis.
17 And the fact they failed to do that gives us
18 everything we need to dismiss this matter and we hope
19 the Court will do so. Thank you very much.

20 THE COURT: Very well.
21 Mr. Maazel, I will give you an opportunity to make a
22 further comment.

23 MR. MAAZEL: Very briefly, Your
24 Honor.

25 Each one of these petitioners

2 paid more than the required fee. It is not disputed,
3 much more than the required fee. So that -- much more
4 than fifty dollars.

5 As to Mr. Tabas' point that
6 people can watch the tabulation, that's meaningless.
7 It is meaningless to watch someone press a button and
8 just recanvass the vote. That's not going to
9 discovery what happens in the code of the software of
10 the machine. That was for another century. The 21st
11 Century we need to do more than just stand there and
12 watch the tabulation. We need to get inside the
13 machine.

14 That leaves me to the final and
15 most important point I think of this entire
16 proceeding. We heard the county board election say
17 something very important, quote, we want our process
18 to be open. We agree with that. We want this process
19 to be open. Open up the software to the people who
20 are experts so that we can all have one hundred
21 percent confidence in the integrity of the Election of
22 Montgomery County and so the voters know their votes
23 count. Thank you, Your Honor.

24 THE COURT: Very well. Well, at
25 this point, I think everyone had an opportunity to

2 state their legal position, and there's nothing else
3 to be presented by the parties at this point, is
4 there?

5 MR. MAAZEL: No, Your Honor.

6 MR. OTTER: No, Your Honor.

7 MS. FORZATO: No, Your Honor.

8 MR. TABAS: No, Your Honor.

9 THE COURT: Very well. I have
10 heard all of the arguments of the counsel ably
11 presented to the Court, and I had an opportunity to in
12 advance of the hearing thoroughly review all of these
13 issues. And considering all of the circumstances, it
14 is the Court's determination to deny all of the
15 petitions to recount/recanvass and the Court will sign
16 an appropriate order in that regard.

17 Very well. Thank you.

18 MS. FORZATO: Thank you, Your
19 Honor.

20 MR. TABAS: Thank you, Your
21 Honor.

22 (At 2:30 p.m., the proceedings
23 were concluded.)

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C E R T I F I C A T E

I hereby certify that the
proceedings and evidence are contained fully and
accurately in the notes taken by me in the above cause
and that this is a correct transcript of the same.

PAULA D. MESZAROS,
Official Court Reporter

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